

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 17134
[REDACTED])	
)	DECISION
Petitioner.)	
_____)	

On November 21, 2002, the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing income tax, penalty, and interest for taxable years 1997 through 2000 in the total amount of \$3,238.

The taxpayer filed a timely appeal. He submitted additional information but did not request a hearing. The Tax Commission, having reviewed the file, hereby issues its decision based upon the information contained in the file.

The taxpayer filed Idaho income tax returns for the years 1995 through 1997 then abruptly stopped filing Idaho returns. Because Tax Commission records suggested the taxpayer met the state income tax filing requirements for the years in question, the Bureau sent the taxpayer a letter asking for clarification. The taxpayer telephoned the Bureau to say he was a Washington resident during all three years. When Tax Commission records did not support that claim, a questionnaire was mailed to the taxpayer. He did not return the completed form.

[Redacted] Idaho Code § 63-3045 (1)(a) states:

63-3045. Notice of redetermination or deficiency --
Interest. (1) (a) If, in the case of any taxpayer, the state tax commission determines that there is a deficiency in respect of the tax imposed by this title, the state tax commission shall, immediately upon discovery thereof, send notice of such deficiency to the taxpayer by registered or certified mail or by other commercial delivery service providing proof of delivery, whichever is the most cost efficient. The notice shall be sent to the taxpayer's last address known to the state tax commission. The notice of deficiency shall be accompanied by an explanation of the specific reason for the determination and an explanation of the taxpayer's right to appeal.

Within sixty-three (63) days after such notice is mailed, the taxpayer may, at his option, file a protest in writing with the state tax commission and obtain redetermination of the deficiency.

Because income records suggested the taxpayer had a filing requirement with Idaho, the Bureau prepared returns for the years 1998, 1999, and 2000 on the taxpayer's behalf and sent him a Notice of Deficiency Determination.

In response, the taxpayer sent a letter of protest along with copies of W-2s for tax years 1999 and 2000. He said he was not an Idaho resident either of those years. He said he would get a duplicate W-2 from his Idaho employer for 1998.

After verifying the information provided by the taxpayer regarding 2000, the Bureau notified the taxpayer that the Notice of Deficiency Determination for tax year 2000 was cancelled, but the determination for the other two years remained unchanged. (The 2000 tax year will not be a part of this Decision.)

On March 21, 2003, the taxpayer sent his 1998 W-2 from his Idaho employer and blank copies of Idaho returns for 1998 and 1999. He explained that he did not have the proper instructions to assist him in completing the forms.

The Bureau prepared the taxpayer's 1998 and 1999 Idaho returns using the information in the W-2s and Tax Commission records. The completed returns were then sent to the taxpayer for signature. However, when the taxpayer did not sign and return the forms, his file was transferred to the Legal/Tax Policy Division for administrative review. He did not respond to a letter from the Tax Appeals Specialist that advised him of his appeal rights.

The Bureau prepared Idaho income tax returns on behalf of the taxpayer based on available information. After the taxpayer provided additional information, the Bureau amended those figures. Withholding that could be identified was allowed to reduce the resulting tax due.

A Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be accurate. Parsons v. Idaho State Tax Com'n, 110 Idaho 572 (Ct. App. 1986). Having presented no information in support of his argument, the taxpayer has failed to meet his burden of proving error on the part of the deficiency determination. Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810 (1984).

The amended 1999 Idaho return prepared by the Bureau after receiving a copy of the taxpayer's W-2 resulted in a \$79 refund to the taxpayer. However, Idaho law prohibits the refund or credit of withholding or tax if the claim for credit or refund is not made within a certain timeframe.

Idaho Code § 63-3035(e) states:

(e) Amounts deducted from wages of an employee during any calendar year in accordance with the provisions of this section shall be considered to be in part payment of the tax imposed on such employee for his tax year which begins within such calendar year and the return made by the employer under this subsection (e) shall be accepted by the state tax commission as evidence in favor of the employee of the amount so deducted from his wages. Where the total amount so deducted exceeds the amount of tax on the employee, based on his Idaho taxable income, or where his income is not taxable under this chapter, the state tax commission shall, after examining the annual return filed by the employee in accordance with this chapter, but not later than sixty (60) days after the filing of each return, refund the amount of the excess deducted. **No credit or refund shall be made to an employee who fails to file his return, as required under this chapter, within three (3) years from the due date of the return, without regard to extensions, in respect of which the tax withheld might have been credited.** In the event that the excess tax deducted is less than one dollar (\$1.00), no refund shall be made unless specifically requested by the taxpayer at the time such return is filed. (Emphasis added.)

Idaho Code § 63-3035(e) is clear and unequivocal. The language in this section "shall be made. . ." is not discretionary, but rather, it is mandatory. The taxpayer did not file a 1999 Idaho return to claim the credit or refund.

The Tax Commission finds Idaho Code § 63-3035(e), cited above, is controlling with respect to the taxpayer's refund for tax year 1999. Withholding will be allowed to offset the tax due, but no credit or refund will be given.

WHEREFORE, the Notice of Deficiency Determination dated November 21, 2002, is hereby MODIFIED and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest.

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1998	\$550	\$138	\$178	\$866
1999	-0-	-0-	-0-	<u>-0-</u>
			TOTAL	\$866

Interest is computed through November 15, 2003.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of taxpayer's right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2003.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this ____ day of _____, 2003, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted] _____